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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,114	06/23/2003	Chris Khazaal	4313P2665	7162
23504	7590	12/28/2005	EXAMINER	
WEISS & MOY PC 4204 NORTH BROWN AVENUE SCOTTSDALE, AZ 85251			CHAWLA, JYOTI	
			ART UNIT	PAPER NUMBER
			1761	
DATE MAILED: 12/28/2005				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/601,114

Applicant(s)

KHAZAAL, CHRIS

Examiner

Jyoti Chawla

Art Unit

1761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-3 and 6, 8, 9, 12-14 16 and 17 are rejected under 35 U.S.C 102(b) as being anticipated by Yankee reference. The reference used is a recipe published in Yankee volume 64, number 5 (May 2000), page 88-96; based on the book "Memoirs of Adele: Son recalls mother's party cooking", obtained from DIALOG, # 04281755, 4/9/2 (item 1 from file 141) *and Good Housekeeping Illustrated Cookbook: Equivalent Amounts Table*

3. The reference teaches a recipe that makes a combination cooked bulgur product called Kibbe (a traditional Middle Eastern snack) with an uncooked shell, with predetermined configuration like a hot dog (figure 5, applicant's drawing), made using a mixture comprising of bulgur with predetermined configuration and edible pre-cooked meat (beef or lamb) filling with nuts (pine) and spices. The bulgur is soaked in water and later put in a sieve for draining and then excess moisture is squeezed out of the soaked bulgur (step 1 of the Shell part of the recipe) and then the bulgur is combined with onion, flour and spices and mixed well in the food processor (step 2 of the Shell part of the recipe). "Draining" and "food processing" are being considered interchangeable to the recited terms "decanting" and "grinding" respectively for the purpose of this office

Art Unit: 1761

action as they are performing the same function. As for the filling of the bulgur food product, the Yankee reference teaches adding the uncooked ground meat and toasted pine nuts to the sautéed onion and garlic and mixing (i.e., blending) and cooking. The Yankee reference discloses the meat (1 lb) to onion (1 medium = 1/2lb) to nuts (pine nuts 2 Tablespoons = 2 oz) ratio (8:4:1) of the filling mixture, which satisfies the range recited by the applicant. The Yankee reference anticipates the above stated ratios of ingredients of the ingredients, however, The Good Housekeeping Illustrated Cookbook: Equivalent Amounts Table is being used to confirm the conversion of amounts from one system of measurement to another. As for the cooking time and temperature ranges, it is a well known expedient in the art to raise the cooking temperature in order to reduce the cooking time therefore, claims about the time and temperature of cooking have been considered accordingly. The cooking step for the combination food according to the said reference is about 3-4 minutes at 370F (187C), which also fulfills the criteria set forth by the applicant. Therefore, claims 1-3,6,8,9,12-14 and 17 are anticipated by Yankee reference for a combination food product called Kibbe.

4. Claims 1, 7-9, 12-14 are rejected under 35 U.S.C 102(b) as being anticipated by Kerkonian (US Patent Number 5246721).

5. Kerkonian teaches a method and an apparatus for making a combination food article, Kibbe with bulgur wheat and ground meat (lamb, chicken or turkey) uncooked shell, and cooked meat (lamb, chicken or turkey) filling with a predetermined shape (i.e., ball) as recited by the applicant and meat filling with nuts and spices which is formed in

Art Unit: 1761

spherical configuration (figure 6 and 7, applicant's drawing). Claims 1,7-9, 12-14 as recited is readable on Kerkonian.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-4 and 6-9, 11-14,16 and 17 are rejected under 35 U.S.C 102(e) as being anticipated by a recipe for Kibbe published on the web site

www.thegutsgourmet.net on October 21,2002. The publication date has been verified

using the site www.archive.org (see attached to the reference) and *Good Housekeeping Illustrated Cookbook: Equivalent Amounts Table*

7. The reference teaches a recipe that makes a combination cooked bulgur product called Kibbe (a traditional Middle Eastern snack) with an uncooked shell made using a mixture of bulgur and meat (lamb) with predetermined configuration (torpedo shape) and edible pre-cooked meat (lamb) filling with nuts (pine) and spices. The bulgur is washed and soaked in water and later drained (step 4 of the recipe) and then the bulgur is combined with meat, onion and spices mixture that has been mixed well in the food processor (step 3 of the recipe). "Draining" and "food processing" are being considered interchangeable to the recited terms "decanting" and "grinding" respectively for the purpose of this office action as they are performing the same function. The ratio of bulgur(1 cup = 8 oz) to raw meat (1 Lb= 16 oz) to fluid (enough for soaking and some for kneading approximately = 1-2 cups), ratio of 1:2:2 for the uncooked shell mixture, which satisfies the range recited by the applicant. As for the filling of the bulgur food

Art Unit: 1761

product, www.thegutsgourmet.net reference teaches adding the uncooked ground meat to the sautéed onion and mix (i.e., blending) and cook. The www.thegutsgourmet.net reference also discloses the meat (0.5 lb) to onion (1.5 cups chopped = 0.5lb) to nuts (pine nuts 2 oz) ratio (4:4:1) of the filling mixture, which falls within the range recited by the applicant. The Good Housekeeping Illustrated Cookbook: Equivalent Amounts Table is being relied upon for reasons mentioned above. As for the cooking time and temperature ranges, it is a well-known expedient in the art to raise the cooking temperature in order to reduce the cooking time therefore, claims about the time and temperature of cooking have been considered accordingly. The cooking time of the combination food according to the said reference is about 3 minutes or until browned at 350F (177C), which also fulfills the criteria set forth by the applicant. This reference can be made fresh or ahead of time and reheated at 400F (204C) for about 10 minutes, which falls within the recited range for claim 5 as recited. Therefore applicant's recited steps of claims 1-4,6-9,11-14, 16 and 17 are anticipated by www.thegutsgourmet.net reference for a combination food product called Kibbe.

8. Claims 1-4 and 6-9, 11-14, 16 and 17 are rejected under 35 U.S.C 102(e) as being anticipated by a reference for "Baked Kibbeh" published on the web site

www.epicurious.com and published in Gourmet Magazine in November 2002 and Good Housekeeping Illustrated Cookbook: Equivalent Amounts Table

9. The reference teaches a recipe that makes Kibbeh (a traditional Middle Eastern snack) with bulgur wheat uncooked shell and cooked meat filling with nuts and spices which is baked in a pan so it takes the configuration of the pan. The product disclosed

Art Unit: 1761

by this Kibbeh reference has meat to onion to nuts ratio for the filling and the bulgur wheat to meat to water ratio for the uncooked shell, within the recited range of the applicant. (The Good Housekeeping Illustrated Cookbook: Equivalent Amounts Table is being relied upon for reasons mentioned above). Further this reference teaches times and temperature ranges, for cooking the filling as well as the combination fresh food product, that fall within the recited range of the applicant as well. Therefore applicant's recited steps of claims 1-4,6-9,11-14, 16 and 17 are clearly readable on the above reference for Kibbeh.

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Art Unit: 1761

12. Claims 4, 5, 7, ⁸10, 11 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over a recipe published on the web site www.thegutsygourmet.net on October 21, 2002, in view of recipe for Kibbe obtained from Yankee volume 64, number 5 (May 2000), page 88-96; based on the book "Memoirs of Adele: Son recalls mother's party cooking", obtained from DIALOG, # 04281755, 4/9/2 (item 1 from file 141); recipe for Kibbeh published in Gourmet magazine, November 2000 and obtained from www.epicurious.com; recipe for Kibbeh Nabilseeyah by Jennifer Felicia Abadi printed in a book "A Fistful of Lentils" copyright 2002, obtained from www.MyJewishLearning.com; and further in view of Baked Kibbeh recipe dated June 29, 2001, obtained from www.superluminal.com/cookbook. Broward the Gourmet's Guide, Miami Herald, June 28, 1990 by Herald Staff obtained from DIALOG (R) file 702 3/9/34 # 05544093; Sharing Roti, Miami Herald, June 16, 1983 by Yolanda Ulrich obtained from DIALOG (R) file 702 3/9/35 # 01045798 have been relied on to attest to the availability of the product. The Good Housekeeping Illustrated Cookbook, 1980 for the Equivalent amounts table; and Essentials of Food Snitation book for the safe cooking temperature table have been relied on for confirmation of the amounts from one system of measurement to another and determination of safe cooking time and temperature range for meats. The publication date has been verified using the site www.archive.org (see attached to the reference) and further in view of www.Swanson.com.

13. The www.thegutsygourmet.net reference is described above in paragraphs 6-7 of this office action.

Art Unit: 1761

14. The claim 4 differ from thegutsygourmet.net reference in the specific cooking conditions, as recited the filing is to be cooked for at least 5 minutes at least 177 C. thegutsygourmet.net reference teaches cooking the filling material containing onions etc till golden and soft and then add ground meat and cook until the meat is browned. The references from DIALOG (R) Yankee,www.MyJewishLearning.com and www.superluminal.com/cookbook, also provide similar details about the cooking temperature however, www.epicurious.com recipe discloses cooking of the filling for 5 minutes and of the combined product at 400F for 35-40 minutes, which falls within the recited range of the applicant. The particular cooking conditions to cook a food product and particularly meat is seen to have been an obvious result effective variable, routinely determinable for one of ordinary skill in the art. To modify thegutsygourmet.net reference, if necessary, and employ the www.epicurious.com cooking conditions to cook the food would therefore have been obvious.

15. In regards to claim 5, as recited it includes steps of packaging, freezing and instructions for reheating the bulgur food article without any specifics mentioned as to how the packaging and freezing is to be done. The references from DIALOG (R) Yankee,www.MyJewishLearning.com , and www.superluminal.com/cookbook, www.epicurious.com are silent in regards to this, however, Jennifer Felicia Abadi's recipe from "A Fistful of Lentils" teaches that the torpedo shaped filled kibbe can be frozen for upto six weeks in layers of wax paper in a tightly sealed plastic container. As to the cooking time and temperature of food product www.thegutsygourmet.net reference temperatures and times fall within the recited range of the applicant. Stores

Art Unit: 1761

stock bags of Kibbe/ kibbeh (bulgur meatballs) in freezers, in Lauderdale Lakes (Broward the Gourmet's Guide, 1990) and Miami (Sharing Roti, Miami Herald, June 16, 1983 by Yolanda Ulrich). Since the combination cooked product can be frozen and also packaged and sold in the market, therefore, it would have been obvious to the one skilled in the art at the time of the invention to modify www.thegutsygourmet.net reference and package the bulgur food product, either fresh or frozen.

16. In regards to claims 7,8 and 11, the www.thegutsygourmet.net as well as the www.epicurios.com references include meat in its raw ingredient list for making shell of the food product as recited. The proportions of the main ingredients fall within the recited range of the applicant (substitutions based on the published equivalent amounts table from Good Housekeeping book).

17. In regards to claim 10, as recited the liquid used to mix the shell material of the food product is broth, all of the above mentioned references use water, however, it has been known for the longest time that for cooking grains and meat, broth can be substituted for water and vice versa. The Swanson broth website posted the information about cooking with broth as early as 1999. Therefore, to modify www.thegutsygourmet.net based on the teachings from the swansonbroth.com and use broth in place of or in addition to water, for its art recognized and applicant's intended purpose would have been obvious.

18. In regards to claim 15, as recited the filling of the bulgur food product consists of nuts other than pine nuts and www.thegutsygourmet.net reference calls for pine nuts. However the reference obtained from www.superluminal.com/cookbook includes

Art Unit: 1761

walnuts or almonds in the filling for the bulgur food product. Therefore, to modify www.thegutsgourmet.net reference and use walnuts or almonds in place of or in addition to pine nuts, for its art recognized and applicant's intended purpose would have been obvious.


19. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure Seibert (US Patent Number 4309450), Zukerman et al. (US Patent Number 5525366), Gum et al. (US Patent Number 6007858), Ward et al. (US Patent Number 4613509), Mogerley et al. (GB 2283159 A), Greafe (1999 DE 1011472), De Weese (US Patent Number 3676148) and Hayhurst et al. (US Patent Number 3649303).

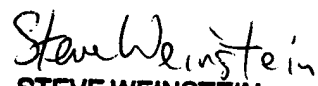
20. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jyoti Chawla whose telephone number is (571) 272-8212. The examiner can normally be reached on 8:00 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1761

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Jyoti Chawla
Examiner
Art Unit 1761
12/09/05


STEVE WEINSTEIN
PRIMARY EXAMINER 1761
12/12/05